

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TENNESSEE**

FUSION ELITE ALL STARS, SPIRIT FACTOR LLC d/b/a FUEL ATHLETICS, and STARS AND STRIPES GYMNASTICS ACADEMY INC. d/b/a STARS AND STRIPES KIDS ACTIVITY CENTER, Individually and on Behalf of All Others Similarly Situated,	
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Plaintiffs,

v.

VARSITY BRANDS, LLC; VARSITY SPIRIT, LLC; VARSITY SPIRIT FASHION & SUPPLIES, LLC; and U.S. ALL STAR FEDERATION, INC.,

Defendants.

Case No. 2:20-cv-02600-SHL-cgc

Jury Trial Demanded

AMENDED MOTION FOR ENTRY OF CASE MANAGEMENT ORDER NO. 1

This is an antitrust class action against Varsity Brands, LLC; Varsity Spirit, LLC, Varsity Spirit Fashion & Supplies, LLC, and U.S. All Star Federation, Inc. (“Defendants”) brought on behalf of a proposed class of All-Star Cheer gyms and natural persons that pay certain of the Defendants directly to attend All-Star Cheer competitions and for All-Star Cheer apparel (“Direct Purchaser Plaintiff Class”). On August 19, 2020, the parties jointly moved for entry of Case Management Order No. 1, which sought, amongst other relief, the appointment of interim co-lead class counsel (Dkt. No. 14, the “Joint Motion”). In particular, the Joint Motion proposed a case management order for the Court’s consideration, which had sought to propose three main tasks.

First, it had sought to consolidate, at minimum for pre-trial proceedings, any subsequent cases filed in, removed to, or transferred to this Court on behalf of persons or entities paying one or more of the Varsity Defendants directly for attendance at All-Star Competitions or for All-Star Apparel, which cases arise from similar facts and circumstances and make substantially the same allegations as those asserted in this action. Second, it proposed a schedule for Defendants to respond to the Complaint filed by Plaintiffs Fusion Elite All Stars, Spirit Factor LLC d/b/a Fuel Athletics, and Stars and Stripes Gymnastics Academy Inc. d/b/a Stars and Stripes Kids Activity Center (“Plaintiffs”). And, third, the proposed CMO No. 1 had set forth a leadership structure for proposed class counsel under Fed. R. Civ. P. 23(g). In support of that motion, Plaintiffs submitted, *inter alia*, Plaintiffs’ Memorandum of Law in Support of Joint Motion for Entry of Case Management Order No. 1; the Declaration of Eric L. Cramer, Esq.; and the Declaration of Victoria Sims, Esq. *See* Dkt. Nos. 14-1-3. Plaintiffs incorporate by reference these filings herein, except and to the extent explicitly amended below.

Subsequent to the filing of the Joint Motion, other plaintiffs filed a related class action alleging similar claims against the same Defendants: *Radek, et al. v. Varsity Brands, et al.*, No. 20-cv-02649 (W.D. Tenn.) (the “*Radek Action*”). Because of the similarities of both cases, earlier today, Plaintiffs in the instant case, along with plaintiffs in the *Radek Action*, filed a Joint Motion to Consolidate the two cases pursuant to Fed. R. Civ. P. 42 (“Consolidation Motion”) (Dkt. No. 23). Plaintiffs have met and conferred with Defendants, and Defendants have stated that they do not oppose the Consolidation Motion. The Consolidation Motion asks that both cases be consolidated into this docket and the Court administratively close the *Radek Action*.

Should the Court grant the Consolidation Motion, Plaintiffs in this case and plaintiffs in the *Radek Action* have reached an agreement to modify the Joint Motion in three respects. First,

Plaintiffs seek to amend the proposed interim Direct Purchaser Class Plaintiffs' leadership structure to add Labaton Sucharow as one of the Co-Lead Class Counsel. Accordingly, Plaintiffs now move for the appointment of Berger Montague PC, Cuneo Gilbert & LaDuca, LLP, and Labaton Sucharow LLP as Co-Lead Interim Class Counsel and Branstetter, Stranch, & Jennings, PLLC as interim Plaintiffs' Liaison Counsel for the Direct Purchaser Plaintiff class in the proposed consolidated action. The proposed CMO 1 that submitted with this Amended Motion provides for the appointment of Berger Montague PC, Cuneo Gilbert & LaDuca, LLP, and Labaton Sucharow as interim Co-Lead Class Counsel for the proposed consolidated action.

Plaintiffs incorporate by reference the facts and arguments from the Motion relating, *inter alia*, to the qualifications of Berger Montague PC and Cuneo Gilbert & LaDuca, LLP, and hereby incorporate by reference the Memorandum (Case No. 2:20-cv-02649-SHL-cgc, Dkt. No. 21-1) filed in the *Radek Action* describing the qualifications of Labaton Sucharow to serve as proposed Co-Lead Counsel in the proposed consolidated action.

Second, should the Court grant the Consolidation Motion, Plaintiffs further seek to amend the Joint Motion by allowing for the filing of a Consolidated Amended Class Action Complaint within 14 days of the granting of the Consolidated Motion. Because the actions would be consolidated, the parties require a consolidated pleading to include the plaintiffs in both actions and their respective claims.

Third, Plaintiffs seek to modify the Joint Motion to provide a new proposed agreed schedule for responding to the Consolidated Amended Class Action Complaint. Plaintiffs and Defendants propose that Defendants would have 60 days from the filing of the Consolidated Amended Class Action Complaint to respond. Should Defendants move pursuant to Fed. R. Civ.

P. 12(b), Plaintiffs would have 45 days to respond to Defendants' motion, and Defendants would have 30 days to file any reply brief.

Accordingly, should the Court grant Plaintiffs' Motion to Consolidate, Plaintiffs hereby amend the Joint Motion to adopt a new proposed CMO No. 1 as follows: (1) Plaintiffs now move for the appointment of Berger Montague PC, Cuneo Gilbert & LaDuca, LLP, and Labaton Sucharow LLP as Interim Co-Lead Class Counsel and for Branstetter, Stranch, & Jennings, PLLC as interim Plaintiffs' Liaison Counsel for the Direct Purchaser Plaintiff class in the proposed consolidated action; (2) Plaintiffs propose to file a Consolidated Amended Class Action Complaint within 14 days of the entry of any Order granting the Consolidation Motion; (3) Defendants shall have 60 days to respond to the Consolidated Amended Class Action Complaint; Plaintiffs shall have 45 days to oppose any Rule 12 motion filed by Defendants; and Defendants shall have 30 days to file any reply briefs on any Rule 12 motions. Defendants do not oppose the requested relief.

A new proposed Case Management Order No. 1 for the proposed consolidated action will be submitted in accordance with the Local Rules and an identical order will be submitted in the *Radek Action*. Plaintiffs have met and conferred with the Defendants who do not oppose entry of this new proposed Case Management Order No. 1.

Accordingly, Plaintiffs respectfully request this new order be entered in lieu of the previously submitted order on August 19, 2020.

Dated: September 8, 2020

Respectfully submitted,

s/ J. Gerard Stranch, IV

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d/b/a Stars and Stripes Kids Activity Center and
the Proposed Direct Purchaser Class*

CERTIFICATE OF CONSULTATION

Consistent with Local Rule 7.2(a)(1)(B), I hereby certify that on September 2, 2020, I, Ben Gastel along with Eric Cramer, Victoria Sims, and Karin Garvey began consultation with Steven Kaiser and Nicole Berkowitz, counsel for the Defendants and such counsel indicated that they did not oppose the relief granted by this motion. Such consultation was by phone on September 2, 2020 and by email thereafter.

/s/ Benjamin A. Gastel

CERTIFICATE OF SERVICE

The undersigned certifies the foregoing document was filed with the Court's Case Management/Electronic Case Filing System, this 8th day of September, 2020, and served upon the following counsel:

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